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OFFICE OF PETITIONS

In re Patent of Hatti et al. : DECISION ON REQUEST
Patent No. 7,769,198 : FOR
Issued: August 3, 2010 : RECONSIDERATION OF
Application No. 10/754,322 : PATENT TERM ADJUSTMENT
Filed: January 9, 2004 :
Docket No. 15296US01 :

This is a decision on the petition under 37 CFR 1.705(d), filed on October 4, 2010, requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand three hundred seventeen (1317) days.

The petition is **DISMISSED**.

Patentees argue the Office incorrectly calculated the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") and the Office should not have entered a reduction in connection with the payment of the issue fee on Monday, September 21, 2010.

In calculating the period of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay"), patentees indicate the period of delay ended on March 11, 2008, the date the RCE was filed. However, per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include "any time consumed by continued examination of the application requested by the applicant under section 132(b)." The period of B Delay in this case is 426 days, which is the number of days beginning on January 10, 2007, the day after the date three years after the filing date, and ending on March 10, 2008, the day before the date the RCE was filed.

Patentees dispute the period of reduction of 2 days, pursuant to 37 CFR 1.704(b), for Applicant delay in filing the issue fee on September 21, 2010, a Monday.

While the September 21, 2010 payment of the issue fee was timely with respect to avoiding abandonment, it was not timely for purposes of determining patent term adjustment. Per 37 CFR 1.704(b), an applicant is responsible for replying to an Office action within three months of the date the Office action was mailed or given to him. The date of receipt in the Office is the salient date for purposes of determining patent term adjustment. In the future, patentees may wish to consider the use of the "Express Mail Post Office to Addressee" service of the United States Postal Service (37 CFR 1.10) or facsimile transmission (37 CFR 1.6(d)) for replies to be accorded the earliest possible filing date for patent term adjustment calculations. Alternatively, patentees may choose to mail correspondence with sufficient time to ensure that the correspondence is received in the Office (and stamped with a date of receipt) before the expiration of the three-month period. See MPEP 2731.

Patentees were properly charged with a 2 day period of delay, beginning on September 20, 2010, the day after three months after the Office action was mailed, and ending on September 21, 2010, the date the issue fee was filed.

In view of the above, the correct patent term adjustment remains 1314 days, which is the sum of 1093 days of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") and 426 of B Delay, reduced by 170 days of overlap (from January 10, 2007 to June 28, 2007), and reduced by 35 days for Applicant delay.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions